

REMARKS

I. Status of the Claims

Claims 1-115 were originally filed. Claims 9, 10, 28-104, and 110 have been canceled. Claims 1-8, 11-27, 105-109, and 111-115 are currently under examination. Applicants note with appreciation that the Examiner has indicated the allowability of claims 1, 4, 7, 12, 15, 18, and 20-27.

Upon entry of the present amendment, claims 1, 4, 7, 15, and 18 are amended to recite an additional component of the claimed compositions: a pharmaceutically-acceptable excipient. This amendment is supported by the specification, *e.g.*, on page 56, lines 8-26. Additionally, claim 11 is amended to ensure proper dependency. No new matter is added.

II. Claim Objection

The Examiner objected to claim 11 for depending from claim 10, which has been canceled. As amended, claim 11 now depends from claim 8. This objection is thus moot.

III. Claim Rejections

A. 35 U.S.C. §112, Second Paragraph

The Examiner raised an indefiniteness rejection under 35 U.S.C. §112, second paragraph, against several pairs of claims: claims 2-3 and claims 105-106; claims 5-6 and claims 107-108; claims 8 and 11 and claims 109 and 111; claims 13-14 and claims 112-113, and claims 16-17 and claims 114-115. The Examiner contended that there is no difference in the subject matter covered by the two sets of claims in each pair.

Applicants respectfully disagree with the Examiner, particularly in light of the present amendment. The first set of claims in each pair named above relates to "a composition," whereas the second set relates to "a fusion protein." Even though the fusion polypeptide in the first set of claims appears to be identical to the fusion protein in the second set of claims, the claimed subject matter of the first set of claims, *i.e.*, a composition, comprises at least the named ingredients: the fusion protein and a pharmaceutically-acceptable excipient. On the other hand,

the claimed subject matter of the second set of claims comprises at least the fusion protein.
Thus, the scope of the first set of claims is distinct from that of the second set of claims in each pair.

As such, the withdrawal of the indefiniteness rejection is respectfully requested.

B. Double Patenting

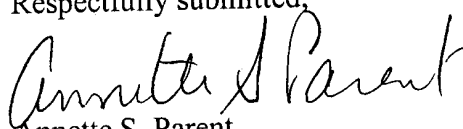
Claims 5 and 19 were rejected under the judicially created doctrine of obviousness-type double patenting as being allegedly unpatentable over claims 1-3 of U.S. Patent No. 6,592,877. Applicants will gladly consider filing a terminal disclaimer once all pending claims in the present application are indicated as otherwise allowable.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,


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